

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4769 of 2009**

- Vikrant Awasthi, age 36 years, S/o Shri VN Awasthi, R/o Q. No. 2/53, Near BIOP School, Kirandul, Distt. Dantewada (CG) At present R/o Shop No. 13, 2nd Floor, Bajrang Complex, Telipara Road, Bilaspur, Distt. Bilaspur (Chhattisgarh).

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Department of Panchayat Evam Gramin Vikas Vibhag, DKS Bhawan, Mantralaya, Raipur (CG).
2. The Collector/Deputy Collector, Bilaspur, Distt. Bilaspur (CG).
3. The Chief Executive Officer (CEO) Janpad Panchayat, Bilha, Bilha, Distt. Bilaspur (CG).
4. The Block Education Officer (BEO), Block Office Bilha, Bilha, Distt. Bilaspur (CG).

---- Respondents

For Petitioner

Shri Ravi Shankar Tiwari, Advocate.

For State/Respondents.

Shri Chandresh Shrivastava, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****15/02/2016**

1. Challenge to the present petition is the order dated 10.07.2009 whereby the claim of the petitioner for compassionate appointment has been rejected on the ground that on the relevant date he had already crossed the maximum age limit for government employment.

2. The claim of the petitioner for compassionate appointment was on account of death of his wife Smt. Anita Awasthy employed with the respondents as Shiksha Karmi Grade-III who died in harness on 10.09.2008. The petitioner, being the Husband of deceased, immediately moved an application for compassionate appointment which was duly processed and considered by the respondents, however, since at the relevant time the petitioner was more than 36 years of age, his claim was rejected for having crossed the maximum age limit of employment with the State government.
3. Counsel for the petitioner submits that age bar fixed for government employment would not be applicable in case of compassionate appointment and bar of age would defeat the object and intention of the compassionate appointment. His candidature cannot be deferred only because of his having crossed the maximum age limit prescribed for government employment. It is also submitted that respondents themselves have submitted in their rejection order that except for the widow all others claiming compassionate appointment like widower, son and unmarried daughter, the maximum age inclusive of age relaxation would be 45 years. In the instant case, if the benefit of age relaxation had been given to the petitioner, definitely he being below 45 years of age at the relevant point of time would have become entitled for appointment.
4. Counsel for the State opposing the petition submits that the claim of the petitioner for compassionate appointment can be considered only in accordance with the scheme framed by the State and the respondents cannot go beyond the scheme. So far as the age bar is concerned, according to the State there is no age limit for grant of compassionate appointment in case if the claimant is widow of deceased employee. But, so far as the other

claimants, if he is widower or the son of deceased employee or for that matter and unmarried daughter, the age limit would be the same as prescribed by the State Govt. for government employment. In the instant case, the petitioner being a candidate of General category, the maximum age limit would be 35 years. If he belongs to some other category, the maximum age limit would have been relaxed up to 45 years, and therefore, the respondents have rightly rejected the claim of the petitioner having crossed the maximum age limit of government employment.

5. True it is that the claim of the petitioner can be decided only in accordance with the scheme framed by the State Govt. and the respondents cannot consider the claim of the petitioner beyond the provisions of the scheme. In case the scheme stipulates certain conditions inclusive that of the maximum age limit or age relaxation, unless the scheme itself is questioned and challenged, the implementation of the same would be strictly within the four corners of the said scheme. In the instant case admittedly the scheme has not been challenged. It is not in dispute that the petitioner was more than 36 years of age on the relevant date and as such had crossed the maximum age limit for government employment being a candidate of General category. Therefore, the respondents have not committed any error in rejecting the claim of the petitioner.

6. In 2009(11)SCC 453 (State of Jharkhand and Others Vs. Shiv Karampal Sahu), the Supreme Court has held as under:

“11.The scheme for grant of monetary compensation to the dependents of the deceased or injured who are affected in any kind of terrorist/virulent/communal attack must be considered in terms of the stipulations made in the circular letters containing policy decisions. Appointment on compassionate ground, it is trite, must be made keeping in view the provisions contained in Articles 14 and 16 of the Constitution of India. Such schemes

cannot be given an expansive meaning as the constitutional scheme envisages that all persons who are entitled to be considered for appointment would be eligible for being considered therefor. Any policy decision for appointment on compassionate ground must, therefore, receive a strict construction.”

13. A circular letter providing for appointment on compassionate ground in case of death of a government servant cannot be extended in case of the dependents of the deceased who was not a government servant. A public employment must be offered to a person who is entitled therefor. All recruitments subject to just exceptions must be made in terms of the rules framed under the proviso appended to Article 309 of the Constitution of India. A circular letter issued by the State cannot be issued de hors the constitutional scheme of making offer of public appointment. [See *Official Liquidator vs. Dayanand & ors.* [(2008) 10 SCC 1 para 52]; *State of Bihar vs. Upendra Narayan Singh & Ors.* [(2009) 4 SCALE 282 para 19]; and *Man Singh v. Commissioner, Garhwal Mandal, Pauri & Ors.* [2009 (11) SCC 448].”

7. Further, in 2012 (9)SCC 545, (*State of Gujarat and Others Vs. Arvindkumar T.Tiwari & Another*), the Supreme Court has held as under :

“8. It is a settled legal proposition that compassionate appointment cannot be claimed as a matter of right. It is not simply another method of recruitment. As claim to be appointed on such a ground, has to be considered in accordance with the rules, regulations or administrative instructions governing the subject, taking into consideration the financial condition of the family of the deceased.however, before a candidate is considered for a post or even for admission to the institution, he must fulfill the eligibility criteria.”

8. The same view has further been re-iterated by the Supreme Court in case of *State of Uttar Pradesh and Others Vs. Pankaj Kumar Vishnoi* (2013(11)SCC 178).
9. The petitioner has also not been able to show any strong grounds for invoking the writ jurisdiction of this court for grant of compassionate appointment. Neither has the petitioner alleged any malafide against the respondents in the course of rejecting his claim application.

10. A claim for compassionate appointment is an exception to the constitutional mandate under Article 14 of the Constitution that all appointments in the Government or Semi-Government organizations must be made by open advertisement and competitive merit selection so as to provide equal opportunity to be considered to all who may be eligible, as employment in the Government constitutes a national wealth. A limited exception has been made to this principle by providing for compassionate appointment which is primarily aimed as a part of social constitutional philosophy of the Government to provide succor to the family of the deceased faced with sudden penury and destituteness due to untimely loss of the bread winner. It is therefore patent that there is always an urgency in a claim for compassionate appointment. If a claim is legitimately made within stipulated time and consideration is belated, different issues may arise for determination. Such is not the case presently.

11. It has repeatedly been held that compassionate appointment is not a constitutionally sanctioned mode of appointment in Government service. Any claim therefore has to be strictly in terms of the policy or circulars regulating the same. The Court cannot consider claims for compassionate appointment on the basis of sympathy.

12. For the foregoing reasons, the writ petition fails and is accordingly dismissed.

No order as to costs.

Sd/-
(P.Sam Koshy)

JUDGE